



OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

MEMORANDUM

Date: April 14, 2014 (as reflected in the Governor's Budget System)

To: Public Defender Commission Budget Committee

From: Harry Freebourn

CC: Bill Hooks, Wade Zolynski, Kristina Neal

RE: Prioritizing Decision Packages

This memorandum offers the agency's recommendations for setting priorities for 2017 biennium budget items drafted for inclusion in the Executive Planning Process (EPP). The items listed below add about ~~90~~ 89.50 new FTEs and ~~\$11.7~~ \$12.3 million in new dollars per fiscal year. This approach to prioritizing the budget items (or decision packages) ranks items that the agency already has obligations to pay higher than those that are needed to address concerns and issues. Priorities one through four are to cover current obligations. The number of decision packages have been reduced from the last presentation to the Commission from 24 to 18 and they are combined into 13 priorities.

The following items are listed in priority order and include a rationale for each:

Priority 1: Base budget, estimated at ~~\$28.5~~ \$28.7 million with 217.50 FTE per fiscal year.

- a. This dollar value includes all programs. Program 3 is expected to have a separate stand-alone base budget that is currently under development. One-time costs are removed to develop this item, including capital case costs and SB 410 expenditures.
- b. This item represents expenditures for current operations. If this is not fully funded without vacancy savings, the agency may need to take actions to reduce current expenditures for items such as payroll, rents, communications, etc. Historically, this item has not been treated as a "decision package" in the legislative process, but is reviewed and voted on separately by legislative committees.

Priority 2 (DP 1)—see EPP items A, G1, H, and O: Make 23.50 modified FTE (temporary) positions permanent at ~~\$1.43~~ \$1.84 million per fiscal year.

- a. This item is only in Program 1 because permanent positions from Program 1 will be transferred to Programs 2 and 3 to reduce the number of decision packages. The number of FTE in Programs 2 and 3 is not material.
- b. Modified FTE will be working with the agency by the end of the current biennium to help address case loads and other issues. The attached worksheet noted as Priority 2 provides the positions by job type and location.
- c. If this item is not approved, the agency will need to release temporary workers and the work they are doing this biennium will not be done or will not be done adequately, possibly resulting in ethical violations.

Priority 3 (DP 2 and 3)—see EPP items D and Q: Cover projected increased contractor costs, \$1.6 million per fiscal year. Have not yet added \$400,000 for Program 2.

- a. This item is for Programs 1 and 3 and will be allocated at a later date.
- b. Payments to contractors for cases assigned in past years are ongoing obligations. Contractor costs are expected to continue to increase because certain cases (especially dependent neglect) that entered the system during the 2013 and 2015 biennia carry over into subsequent fiscal years and will layer onto new cases that come in during the 2017 biennium. In fact, this is the main driver for transferring funds from FY 15 to FY 14. Program 2 is not included at this time as current data show that Program 2 is building a contract dollar base during fiscal 2014 that should cover 2017 biennium contract costs. Also, Program 2 seeks to add new FTE to work additional future caseloads.

Priority 4 (DP 4)—see EPP item K: Cover increased facility lease costs at \$100,000 per fiscal year.

- a. The agency either has or will have legal obligations to cover facility leases that house operations. The agency has 17 leases and most will go through a renewal process sometime during the next three fiscal years. The agency's lease renewal plan is to move increases into the 2017 biennium to match up with funding. This memo requests all funding for leases in Program 1. Funds would be transferred to the other two programs once space allocations or values become known.
- b. If this is not funded, the agency would need to take funds from an area that was funded or terminate some of the leases. The latter action is neither easy to do nor practical in most cases.

Priority 5 (DP 5)—see EPP item B: Non-attorney pay ladder and market adjustment, \$900,000- \$1.2 million per fiscal year.

- a. This package is only in Program 1 as Program 2 is already paying at the 2012 market rate and Program 3 has a very small employee base that makes it non-material. The Commission voted to amend this package to adopt the 2014 market once it is published in late summer of 2014, and will bring in the other two programs if necessary. It will also cover pay ladder adjustments that were frozen during fiscal 2015.
- b. This action creates internal equity within the agency's workforce and will address excessive turnover currently experienced in legal staff positions in the regions.

Priority 6 (DP 6 and 7)—see EPP items B, I and P: Attorney pay ladder and market adjustment, estimated \$403,000 for fiscal 2016 and \$768,000 for fiscal 2017 (does not currently include market adjustment).

- a. This item restarts the pay ladders in both Programs 1 and 2 that were funded for fiscal 2014 but not for fiscal 2015. This DP will also include a market adjustment based on a market study that will occur during the summer of 2014.
- b. If not funded, turnover may revert back to double digit rates experienced during fiscal 2012 and 2013. This excessive rate of turnover created disruption in the justice system and diminished the level of service to the agency's clients.

Priority 7 (DP 8 and 9)—see EPP items A, H and O: Add 32 new FTE to address excessive caseloads, -\$2.7 \$3 million for fiscal 2016 and -\$2.6 \$2.8 million for fiscal 2017.

- a. This item adds 29 new FTE positions in Program 1 and three in Program 2. In Program 1, this action is based on excess attorney caseloads over and above allowable hours and includes additional support staff based on current attorney to staff ratios. Please refer to the attached worksheet identified as Priority 7 that shows staffing by region. Programs 1 and 3 can use these FTE to coordinate staffing issues caused by contractor shortages in the system. Program 2 adds two attorneys and one support staff to cover both current excess and future increases in caseloads.

Priority 8 (DP 10)—see EPP items E1 and E2: Add 7 FTE eligibility specialists and 6 FTE resource advocates, \$780,000 for fiscal 2016 and \$725,000 for fiscal 2017.

- a. These positions are for Program 1, and will serve two purposes: to assure that only qualified applicants are provided services, and to allow attorneys to focus on legal work rather than administrative tasks. The eligibility specialists may serve to curb future new case growth while the resource advocates may temper the need for future attorney resources.

Priority 9 (DP 11 and 12)—see EPP items F and R: Address managers' caseloads, 10.00 FTE and \$875,000 for fiscal 2016 and \$821,000 for fiscal 2017.

- a. This item adds 9 FTE in Program 1 and 1 FTE in Program 2 to reduce current managers' caseloads in compliance with agency policy. New staff attorneys taking cases from managers will allow the managers more time to manage and mentor employees. It also adds support staff using current attorney to support staff ratios.

Priority 10 (DP 13, 14, and 15)—see EPP items D and Q: Contract attorney rate increase, \$420,000 for each fiscal year.

- a. This item provides funds to the agency to make adjustments to the contract attorney rate and/or adjust other payments made to contract attorneys. The dollar allocation among programs will be done at a later date.

Priority 11 (DP 16)—see EPP item G2: Address case growth in eastern Montana, 11.00 FTE and \$1.045 million for fiscal 2016 and \$1.005 million for fiscal 2017.

- a. Higher priority decision packages include some staff to cover current excessive caseloads in eastern Montana. For example, the Glasgow office and its 2.00 FTE are in the modified FTE section. This DP adds staffing to existing offices and a new office in Sidney to cover future growth.

Priority 12 (DP 17)—see EPP item C: Capital case defense, \$1 million for each fiscal year.

- a. This item funds capital case expenditures.

Priority 13 (DP 18)—see EPP item M: Replace computers and printers, \$66,000 for fiscal 2016 and \$68,000 for fiscal 2017.

- a. This item funds equipment replacements.